

PUBLIC LAW BOARD NO. 1582

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: That the Carrier violated the Agreement, particularly Article V thereof, when as a result of an investigation conducted November 21, 1975 they dismissed Carpenter Helper Harry Tsosie for alleged absence from duty without permission commencing November 4, 1975 on improper and insufficient evidence. That B&B Helper H. Tsosie be reinstated to his former position with seniority, vacation and all other rights unimpaired and be compensated for all loss of earnings account his improper dismissal.

FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was dismissed from the service of the Carrier for his allegedly being absent from duty without permission November 4, 1975 while employed on B&B Gang No. 14 at Pica, Arizona.

The Organization contends that the discipline assessed is extreme and excessive and that certain questions were prejudicial to the rights of the claimant. The Organization refers specifically to questions regarding previous absences without permission. These questions are only admissible with regard to the amount of discipline to be assessed. Certainly such questions should have no bearing upon the issue of the claimant's guilt in the case at hand.

The claimant was notified that his case was going to be heard before this Public Law Board and was advised that he was privileged to appear in person or by a representative of his choice if he so desired. The claimant did not appear, and the Union represented him in this case.

The Board has examined the evidence of record and studied the testimony of the claimant and of the B&B foreman who testified that the claimant was absent without authority. There can be no question but that the claimant was guilty. In view of his prior cases of being absent without authority, the Board is not justified in reinstating the claimant herein.

If the claimant was reinstated, he would have seniority over employees who have been working consistently since the claimant has not been working. Such would not be reasonable and just, particularly in view of the fact that this Board does not have the authority to overrule the decision of the Carrier.

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Because of the unusual circumstances in this case, the Board does suggest that the Carrier employ the claimant as a new hire.

AWARD: Claim denied.

sd/ Preston J. Moore,
Preston J. Moore, Chairman

sd/ S. E. Fleming
Organization Member

sd/ B. J. East
Carrier Member